COMPLAINT RESOLUTION AND REVIEW

PROGRAM AREA REPORT

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COMPLAINT RESOLUTION AND REVIEW

The Children's Commission's Complaint Resolution and Review division addresses complaints made about alleged breaches of rights accorded to children in care under section 70 of the *Child, Family and Community Service Act (CFCSA)*, and decisions made by the Ministry for Children and Families (MCF) concerning services to any child.

The Complaints Process

A complaint may be made by a child, a child's parent, any other person representing the child, or the Office of the Child, Youth and Family Advocate. Upon receipt of a complaint, the Commission assesses whether the complaint falls within its jurisdiction as set out in the *Children's Commission Act (the Act).*

The Commission accepts complaints for review when they fall under its jurisdictional mandate. Under Section 11 of the *Children's Commission Act* (the Act), the Commission must refuse to accept a complaint for review if:

(a) an internal review process of a ministry or agency is available to deal with the complaint and that process has not been exhausted,
(b) an investigation, dispute resolution process or proceeding relating to the subject matter of the complaint is in progress under another law or a decision has been given by a court or other tribunal in such a proceeding,
(c) the complaint is not about a breach of the rights of a child in care or about a decision referred to in section 10(1)(b) or for any other reason not within the commission's jurisdiction,
(d) the complaint is not made within the prescribed time limit, or
(e) the subject matter of the complaint is trivial or the complaint is made in bad faith.

Alternatively, the Commission may decide to defer accepting a complaint for review until another investigation, dispute resolution process or proceeding is completed. If the criteria for refusal or deferral is not met, the Commission will proceed with a review of the complaint. Once this initial assessment of a complaint is completed, the Commission sends a letter to the person making the complaint indicating whether the complaint is accepted for review, refused or deferred.

When a complaint is accepted for review, the Commission notifies people such as: the MCF Director of Child Protection; the child (if he/she is 12 years or more of age and is not the complainant); the person in charge of the designated service; and the person directly affected by the decision, if he or she is not the person making the complaint.

The Commission may also give notice to children who are under 12 years of age if, in the Commission's opinion, the child has a sufficient level of understanding. The child's caregiver, a designated representative of an aboriginal community, the advocate, and any other person the Commission considers appropriate may also be given notice.

The Commission staff person responsible for conducting an accepted complaint review, the Complaint Resolution Manager, begins by explaining the Commission's complaint review process with those people involved, including the child/youth where appropriate, and gathering information relevant to the issues raised by the person making the complaint. The Complaint Resolution Manager assesses how the child's views will be made known during the review process and whether advocacy support is required. At this stage, the Complaint Resolution Manager also explores all options for resolving the complaint and discusses those options with those people affected.

Under the Act, the Commission may proceed with a review or, alternatively, attempt to settle the complaint by any process the Commission considers appropriate, which may include using or referring the complaint to an alternate dispute resolution process. If a resolution is achieved, the Complaint Resolution Manager confirms in writing what the people involved in the review process have agreed to. If, in the alternative, a resolution to the complaint is not achieved, a letter of notification of non-settlement is sent out and the Complaint Resolution Manager prepares a report which is forwarded to the various people involved for their comments.

The report, and any comments received, is submitted to the Children's Commissioner who, pursuant to section 13(2) of the Act, must decide to refer the complaint to the Tribunal Division for review, or terminate or dismiss the complaint. When considering whether to dismiss a complaint, the Commissioner is guided by criteria set out in section 18 of the *Children's Commission Regulations (the Regulations):*

(a) the complaint should have been refused (because it was not within our jurisdiction to review);
(b) the complaint is withdrawn or abandoned by the complainant;
(c) another law or administrative procedure has provided an adequate remedy or the substantive matter is before the court;

(d) there is no apparent benefit or reasonable prospect of benefit to the child by proceeding with the review.

Subsequent to the Children's Commissioner's decision, the people originally notified about the Commission's complaint review will receive a letter advising them that the Children's Commissioner referred the complaint to the Tribunal Division or, alternatively, indicating that the complaint was dismissed and providing reasons for the dismissal.

Complaint Calls to the Commission in 2000

During the year 2000, the Commission opened 339 complaint files and responded to 95 other inquiries about children. Within the 339 complaint files, 1,079 complaint "issues" were raised, including 387 complaint issues about alleged breaches of rights, and 692 issues about decisions pertaining to designated services provided by MCF. In addition, Commission staff continued to review 61 files (including 284 issues) carried over from 1999.

Almost one-half (47%) of the complaint issues pertaining to alleged breaches of rights concerned section 70 (1)(a) of the CFCSA. This section specifies the right of children in care to be "fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the placement." The Commission found this alleged breach often related to the level or quality of care received by children in MCF's care.

Another 37% of the issues regarding rights of children in care related to sections 70(1)(b), 70(1)(c) and 70(1)(j) of the CFCSA. Specifically, these sections concern the rights of children in care to be informed about their plan of care (section 70(1)(b)); consulted about significant decisions (section 70 (1)(c)); and receive guidance and encouragement to maintain their cultural heritage (section 70(1)(j)).

The issues most commonly raised by callers concerning MCF decisions about services to children related to child protection, guardianship placement, quality of foster care and access by people such as parents, siblings and relatives to children/youth in MCF's care. Together, these issues accounted for approximately 68% of the issues brought to the Commission in 2000 about decisions regarding MCF services to children.

The number of complaint issues about MCF decisions to delay or not provide services to children and about services to children with special needs represented approximately 16% of the issues raised with respect to MCF services decisions in 2000.

In 56% of the cases, the caller raising complaint issues was a parent. Other family members, including siblings, raised issues in another 13% of the cases. In 23 of the cases (7% of the total), the calls were made by the child or youth who was the subject of the complaint. Other people who contacted the Commission in 2000 on behalf of children and youth included foster parents, aboriginal agencies, advocates, friends, lawyers, caregivers, contractors, medical personnel and neighbors.

The Commission referred most of the 339 callers who brought complaint issues forward to MCF's complaint process, pursuant to section 11(a) of the Act, which requires the Commission to refuse a complaint if there is an available internal review process which has not been exhausted. The Commission invited callers to return to the Commission with their complaint in the event that they were not satisfied with the outcome of MCF's review process.

Complaints Accepted for Review

During 2000, 23 of the complaint calls resulted in formal acceptance of a complaint for review by the Commission. The majority of complaints relating to alleged breaches of rights concerned the rights of children:

- to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the placement,
- to be informed about their plans of care,
- to be consulted and to express their views, according to their abilities, about significant decisions affecting them.

The Commission also dealt with alleged breaches of children's right: to medical and dental care when required; to receive guidance and encouragement to maintain their cultural heritage; to be informed about and to be assisted in contacting the Child, Youth and Family Advocate; to privacy during discussions with members of their family; and to be free from corporal punishment.

The majority of accepted complaints the Commission reviewed in 2000 relating to MCF decisions concerned issues pertaining to child protection, guardianship placement and special needs issues. Other accepted complaints about MCF decisions examined such topics as the provision/discontinuation of services, the quality of foster care, and access by parents, siblings, and relatives to children in MCF's care.

Outcomes of Complaint Reviews

During 2000, the Commission closed 25 of the 53 accepted complaint cases that were being dealt with during the year (23 new cases plus 30 carried over from 1999). As a result, 28 cases remained open at the end of December, 2000.

Of the 25 complaint cases that the Commission closed, the Children's Commissioner referred 6 cases to the Tribunal Division for further review (see Tribunal Division report).

The outcome of the Commission's complaint resolution and review process for the remaining 19 accepted complaint cases is as follows:

- 11 complaint cases, involving 37 issues, were closed as resolved,
- 8 complaint cases were dismissed under section 18 of the Regulations.

The resolved complaint cases dealt with alleged breaches of rights primarily relating to the children's right to be fed, clothed and nurtured and to be given the same quality of care as other children in the placement; to be informed about their plans of care; to be consulted and to express their views; to receive guidance and encouragement to maintain their cultural heritage; and to be informed about and assisted in contacting the Office of the Child, Youth and Family Advocate.

These resolved complaint cases also incorporated complaints about MCF decisions related to such topics as: access by parents, siblings and relatives to a child in MCF's care; special needs (i.e. funding and waitlists); provision/discontinuation of a service; refusal to provide a service; and guardianship placement (i.e. adequacy, appropriateness, change).

Two of the 11 resolved cases were referred to an Alternate Dispute Resolution process under Section 13(1) of the Act.

In terms of the issues involved in the 11 resolved cases, 21 issues specifically related to alleged breaches of rights. The primary number of resolved complaint issues related to children's right to be informed about their plans of care. The next highest number of resolved complaint issues concerned children's right to be consulted and express their views and, secondly, the right to be fed, clothed and nurtured and to be given the same quality of care as other children in the placement. The remaining number of resolved complaint issues was associated with children's right to receive medical and dental care, to be informed about the Office of the Child, Youth and Family Advocate, and to receive guidance and encouragement to maintain their cultural heritage.

In relation to the complaint issues specific to MCF decisions, the Commission resolved 16 complaint issues. The majority of complaint issues resolved related to guardianship placement decisions while the second largest number of resolved complaint issues concerned decisions about services to children with special needs. The remaining complaint issues resolved dealt with: the provision/discontinuation of services; access by parents, siblings and relatives to child/youth in foster care; child protection; and the quality of foster care.

During the Commission's review process, the Children's Commissioner dismissed 8 cases under section 18 of the Regulations for the following reasons:

- the child requested that the complaint be withdrawn (3 cases),
- the complaint should have been refused under section 11 of the Act (2 cases),
- the complaint was withdrawn/abandoned by the complainant (1 case),
- another remedy or court process was found to apply (1 case),
- no apparent benefit to the child was anticipated by proceeding (1 case).

The dismissed cases involved 4 issues related to alleged breaches of rights. These issues pertained to the child's right to be fed, clothed and nurtured; to be informed about their plans of care; and to be consulted and express their views.

The largest number of complaint issues the Children's Commissioner dismissed related to MCF decisions concerning child protection matters. The remaining complaint issues dismissed addressed: guardianship placement; access by parents, siblings and relatives to children in foster care; provision/discontinuation of MCF services; and the quality of foster care.

Other Activities of the Complaint Resolution and Review Program

During 2000, the Commission worked with the MCF, the Office of the Child, Youth and Family Advocate and the BC Federation of Foster Parents Association to develop new approaches for resolving complaints involving changes of placement for children in care. The Commission expects this accelerated process to be implemented during 2001.

The Commission, the Federation of BC Youth in Care Networks and MCF also participated in a review of the views of youth residents in a secure custody center in the province. The review, completed in late 2000, resulted in the following observations:

1. There are positive developments of provincial policies and procedures that outline the rights of youth in custody.
2. There is a need to include these rights in Orientation Guides for youth.
3. There is an increased need for information about the MCF and Commission's review process in the custody center.
4. There is a need to provide information about complaint review options in the youths' Life Skills program and in ways other than in writing (for those who cannot read).
5. There is a need to provide a locked box for youth in order to enhance their ability to complain directly to the Director of the custody center.
6. There is a need for regular visits to the custody center by the Child, Youth and Family Advocate.

Finally, this is the fourth year for the Commission's complaint review process. The Children's Commissioner, consistent with his statutory mandate under the *Children's Commission Act*, plan a full review of the Commission's complaint review process in 2001.